FILED JULY 16, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	**Case Nos.: 12-O-14553-DFM (12-O-15590; 12-O-15954)**
ANDREW FRANCIS LINEHAN,	)	**DECISION**
Member No. 194350,	)	
A Member of the State Bar.	)	

INTRODUCTION

Respondent Andrew Francis Linehan (Respondent) is charged here with seven counts of misconduct, involving three different client matters. The counts include allegations of willfully violating: (1) Business and Professions Code section 6103 (failure to obey court order)[1] [two counts]; (2) section 6068, subdivision (i) (failure to cooperate in State Bar investigation) [three counts]; (3) section 6068, subdivision (a) (failure to comply with laws); and (4) section 6106 (moral turpitude). Respondent stipulated at trial to culpability with regard to all but the charge of moral turpitude. The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on December 20, 2012. On January 14, 2013, Respondent filed his response to the NDC.

[1] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

On January 29, 2013, the initial status conference was held in the case. At that time the case was scheduled to commence trial on April 23, 2013, with a two-day trial estimate.

Trial was commenced and completed on April 23, 2013. As noted, Respondent stipulated at that time to culpability to six of the seven charged counts, and the parties presented to the court at that time a stipulation of all of the facts surrounding those six counts. Testimony and evidence was then presented by Respondent with regard to the disputed moral turpitude charge. The State Bar was represented at trial by Deputy Trial Counsel Adriana Burger. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the stipulation of undisputed facts and conclusions of law filed by the parties and on the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in the State of California on February 5, 1998, and since that time has been a member of the State Bar of California.

Case No. 12-O-14553

On July 28, 2011, Respondent represented Salvador L. Sanchez, the respondent in a dissolution matter, in the case entitled *Sanchez vs. Sanchez*, in the Riverside Superior Court, case number SWD005757.

On July 28, 2011, Respondent was ordered by the court to pay Bernice Sanchez, the petitioner in the dissolution matter, the amount of $2,600 in sanctions within 30 days of the order. Respondent was properly served with the order and received notice of it. The order is now final. Respondent did not appeal or otherwise seek relief from the sanction order. Nor did Respondent comply with it.

On April 24, 2012, the State Bar opened a disciplinary investigation in case No. 12-O-14553. On June 27, 2012, a State Bar investigator wrote to Respondent regarding case No. 12-O-14553. In the letter, the investigator requested that Respondent respond in writing on or before July 12, 2012, to specified allegations of misconduct being investigated by the State Bar. Respondent received the letter.

On July 9, 2012, Respondent telephoned the investigator and left a message that he called with his telephone number. On July 9, 17 and 24, 2012, the investigator called the number left by Respondent and left messages for Respondent to call him. Respondent did not respond to any of the telephone calls.

At no time did Respondent provide a substantive response, in writing or otherwise, to the investigator's letter of June 27, 2012.

Count 1 – Section 6103 [Failure to Obey Court Order]

Section 6103 provides, in pertinent part: "A willful disobedience or violation of an order of the court requiring [an attorney] to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, … constitute causes for disbarment or suspension."

Respondent was ordered by the court to pay sanctions to the opposing party in the *Sanchez* matter. The State Bar alleges, Respondent agrees, and this court concludes, that Respondent's failure to pay those sanctions constituted a willful violation by him of section 6103.

Count 2 – Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

Section 6068, subdivision (i), of the Business and Professions Code, subject to constitutional and statutory privileges, requires attorneys to cooperate and participate in any

disciplinary investigation or other regulatory or disciplinary proceeding pending against that attorney.

The State Bar alleges, Respondent agrees, and this court concludes, that Respondent's failure to respond to the State Bar investigator's inquiries regarding case No. 12-O-14553 constituted a willful violation by him of section 6068, subdivision (i). (See, e.g., *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 644 [attorney may be found culpable of violating § 6068, subd. (i), for failing to respond to State Bar investigator's letter, even if attorney later appears and fully participates in formal disciplinary proceeding].)

Case No. 12-O-15590

On October 5, 2010, Respondent represented Colt Security Inc., a California Corporation and Dennis L. Oliver; a defendant in a civil matter, in the case entitled *Partee v. Colt Security, Inc., et.al,* in the Riverside Superior Court, case number INC 087983.

On November 19, 2010, Respondent was ordered by the court to pay the attorney for the plaintiff, Renell E. Burch, sanctions in the amount of $33,766.50 within 30 days of the order pursuant to section 473, subdivision (b), of the California Code of Civil Procedure. Respondent was properly served with the order and received notice of it. Respondent did not comply with the sanction order. Nor did he appeal or otherwise seek relief from it.

On August 6, 2012, the State Bar opened an investigation in case No. 12-O-15590. On September 12, 2012, a State Bar investigator wrote to Respondent regarding case No. 12-O-15590. Respondent received the letter. In the letter, the investigator requested that Respondent respond in writing on or before September 24, 2012, to specified allegations of misconduct being investigated by the State Bar. Respondent did not respond to the investigator's letter requesting a written response.

Count 3 – Section 6103 [Failure to Obey Court Order]

Respondent was ordered by the court to pay sanctions to the attorney for the plaintiff in the *Partee* matter. The State Bar alleges, Respondent agrees, and this court concludes, that Respondent's failure to pay those sanctions constituted a willful violation by him of section 6103.

Count 4 – Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

The State Bar alleges, Respondent agrees, and this court concludes, that Respondent's failure to respond to the State Bar investigator's inquiries regarding case No. 12-O-15590 constituted a willful violation by him of section 6068, subdivision (i).

Case No. 12-O-15954

On July 6, 2012, the California State Bar Court Review Department entered an order in case no. 09-O-10369, effective July 30, 2012, suspending Respondent from the practice of law as a result of Respondent's failure to provide proof of his passage of the Multistate Professional Responsibility Examination within the time prescribed in a Supreme Court order filed April 27, 2011. On that same date, the State Bar Court Review Department properly served a copy of its order on the Respondent at his State Bar membership records address. Pursuant to that order, Respondent became ineligible to practice law on July 30, 3012, and remained suspended until September 11, 2012.

On July 30, 2012, the first day of Respondent's suspension, and with knowledge of the suspension, Respondent appeared in the Riverside Superior Court Family Law Department in the matter entitled *Shick & Shick*, and represented Rickie S. Shick, a party in the matter, in an urgent and unexpected matter. The opposing party in that dissolution, pursuant to the parties' agreement, was to have taken off calendar a motion that had previously been scheduled to be

heard on July 30. This motion involved custody issues over a child who was then battling for her own life.

On the morning of July 30, the first day of Respondent's ineligibility, Respondent received a frantic call from his client that the motion still appeared on the court's calendar for that day. When the client called, concerned that his former spouse or attorney might be breaching the agreement to postpone the scheduled court hearing, Respondent told the client that he was ineligible to practice because of the July 6, 2012 order. Unfortunately, at the time of the client's call to Respondent that morning, the client was in the process of taking his daughter to the hospital for another round of chemotherapy and, hence, was unable to make any appearance himself at the Riverside court or to otherwise take actions in the matter. As a result, Respondent agreed with the client that Respondent would go to the court to make certain that the matter was taken off calendar.

When Respondent arrived at the court, the matter remained scheduled to be heard. However, the opposing counsel was not there for Respondent to address or confront over the issue. Respondent then talked about the matter with the court's clerk, including informing the clerk that he was not eligible to practice. The clerk informed Respondent that he would need to address the situation with the court when the matter was called.

When the matter was called, Respondent merely stated his appearance, when the court notified him that the opposing attorney was appearing telephonically. Opposing counsel then informed the court that "this motion was to go off calendar" and reported to the court that the parties were working out a stipulation resolving the matter. The court then concluded by asking Respondent if he wanted to be heard. Respondent merely affirmed the correctness of the opposing attorney's statement about the probable future resolution of the issue, told the court that the parties, "because of the condition of their daughter, have realized the importance of getting

along. And they actually have been doing very well, according to my client. And the daughter is actually in chemo now." With that, the court took the matter off calendar.

On August 13, 2012, the State Bar opened an investigation in case No. 12-O-15954. On September 10, 2012, a State Bar investigator wrote to Respondent regarding case No. 12-O-15954. In the letter, the investigator requested that Respondent respond in writing on or before September 24, 2012, to specified allegations of misconduct being investigated by the State Bar. Respondent received the letter but did not respond to it.

Count 5 –Section 6068, subd. (a) [Failure to Support Laws/Unauthorized Practice of Law]

Section 6068, subdivision (a), makes it the duty of an attorney "[t]o support the Constitution and laws of the United States and of this state." Section 6125 provides that "No person shall practice law in California unless the person is an active member of the State Bar." Section 6126, subdivision (b), states that "Any person who has been involuntarily enrolled as an inactive member of the State Bar, or has been suspended from membership from the State Bar, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or a county jail." Where it is contended that a member has violated sections 6125 and 6126, the appropriate method of charging those violations is by charging a violation of section 6068, subdivision (a). (See *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.)

The State Bar alleges, Respondent agrees, and this court concludes, that Respondent's actions in formally appearing on behalf of his client before the court on July 30, 2012, when Respondent was not eligible to practice law, constituted the unlawful practice of law and was a willful violation by him of section 6068, subdivision (a).

Count 6 – Section 6106 [Moral Turpitude]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

Moral turpitude has been defined as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Fahey* (1973) 8 Cal. 3d 842, 849, citing *In re Craig* (1938) 12 Cal.2d 93, 97; *Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67, 73; *In re Boyd* (1957) 48 Cal.2d 69, 70.) The concept of moral turpitude depends upon the state of public morals, and may vary according to the community or the times as well as on the degree of public harm produced by the act in question. (*Id*., citing *In re Hatch* (1937) 10 Cal.2d 147, 151; and *In re Higbie* (1972) 6 Cal.3d 562, 569-570.) The paramount purpose of the "moral turpitude" standard is not to punish practitioners but to protect the public, the courts and the profession against unsuitable practitioners. (See *Hallinan v. Committee of Bar Examiners* (1966) 65 Cal.2d 447, 471-472; *In re Rothrock* (1940) 16 Cal.2d 449, 454.) To hold that an act of a practitioner constitutes moral turpitude is to characterize him as unsuitable to practice law." (*In re Higbie, supra*, 6 Cal.3d 562, 570.)

There is not clear and convincing evidence that Respondent committed acts involving moral turpitude. The unauthorized practice of law is not necessarily an act of moral turpitude. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 905; *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 239.) In the instant case, Respondent disclosed to both his client and to the court clerk his ineligibility to practice. The clerk may or may not have informed the judge. In his brief appearance, conducted under unusual circumstances, Respondent only basically confirmed opposing counsel's representation to the court about the status of the matter. There is no evidence of any affirmative statement by

Respondent that he was actually entitled to practice law at that time, and the evidence is uncontradicted that he told both his client and the court's clerk before the hearing of his suspended status. There was no discussion of any legal issues or factual disputes at the hearing, and no harm resulted. The matter was simply taken off calendar by the court as the parties had previously agreed. Had the opposing counsel acted earlier, the matter never would have been called. While Respondent's appearance at the hearing may be viewed as an implied misrepresentation or a misrepresentation by concealment, his conduct in this instance does not rise to an act of moral turpitude. (See *In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. at 239.)

Count 7 – Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

The State Bar alleges, Respondent agrees, and this court concludes, that Respondent's failure to respond to the State Bar investigator's inquiries regarding case No. 12-O-15954 constituted a willful violation by him of section 6068, subdivision (i).

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)[2] The court finds the following with respect to alleged aggravating factors.

Prior Discipline

Respondent has two prior records of discipline.

In Supreme Court case No. S190652 (State Bar Court case Nos. 09-O-10369 and 10-O-06989), filed April 27, 2011, discipline was imposed consisting of 18 months' stayed suspension and two years' probation for misconduct occurring between December 2007 and July

[2] All further references to standard(s) or std. are to this source.

2010 in two client matters and a client trust accounting matter which violated rules 3-110(A) and 4-100(A) (one count each) and 3-700(D)(1) (two counts). The parties stipulated that no prior discipline, candor, and cooperation were mitigating factors.

In Supreme Court case No. S198815 (State Bar Court case Nos. 10-O-10931 and 11-O-12235), filed May 17, 2012, discipline was imposed consisting of two years' stayed suspension and two years' probation for misconduct occurring in September 2010 in one client matter for nonpayment of sanctions in violation of section 6103. The parties stipulated to one prior disciplinary record in aggravation and to candor and cooperation in mitigation. The court notes that this is similar misconduct to that found in the present case.

These prior records of discipline are a serious aggravating circumstance.

Multiple Acts of Misconduct

Respondent has been found culpable of multiple acts of misconduct in the present proceeding. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court finds the following with respect to alleged mitigating factors.

Cooperation/Insight into Misconduct

Respondent entered into an extensive stipulation of facts and admitted culpability in this case, for which conduct Respondent is entitled to some mitigation. (Std. 1.2(e)(v); see also *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 913 [limited mitigation is routinely recognized when a respondent stipulates to material facts]; *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443; *In the Matter of Johnson* (Review Dept.

2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

Candor

Respondent demonstrated candor to the State Bar and this court regarding the circumstances surrounding his misconduct. This is a mitigating factor. (Std. 1.2(e)(v).)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in a talismanic fashion. As the final and independent arbiter of attorney discipline, the court may temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.)

In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanctions for Respondent's misconduct are found in standards 1.7(b) and 2.6.

Standard 1.7(b) provides: "If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate." As noted above, the standards are guidelines and are not applied without analysis.

Standard 1.7(b) should not be applied routinely. "Merely declaring that an attorney has [two prior] impositions of discipline, without more analysis, may not adequately justify disbarment in every case." (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.) Despite the unequivocal language of standard 1.7(b), disbarment is not mandated even if compelling mitigating circumstances do not predominate (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781) because the ultimate disposition of the charges varies according to proof (*In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 125) and because the standards can be tempered by "considerations peculiar to the offense and the offender" (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222; see also *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994).

A disbarment recommendation under standard 1.7(b) made solely on the number of times a respondent has been disciplined would require the court to blindly treat all prior records of discipline as equally aggravating. It should be made only after the court has carefully examined the nature and extent of the respondent's prior records of discipline and given due regard to the

facts and circumstances of the present misconduct. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704; Accord, *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841-842.)

In determining the appropriate level of discipline, the court found some guidance in *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697. In *Meyer*, the respondent had two prior records of discipline. The first involved one client matter and was mitigated because respondent committed the misconduct during a period of time when he was under unusually great business pressures. The second record of discipline involved three instances in which respondent failed to comply with the conditions attached to a private reproval. This matter was mitigated by extreme emotional difficulties and depression caused by marital difficulties. The court held that despite two prior records of discipline, the nature and extent of the prior records of discipline were not sufficiently severe to justify recommending disbarment in the proceeding under standard 1.7(b). The same rationale applies in the present case and, also, the present misconduct did not involve moral turpitude. In consideration of these factors, the court does not recommend disbarment as appropriate pursuant to standard 1.7(b).

Standard 2.6 provides that violation of certain provisions of the Business and Professions Code, including sections 6103 and 6068, must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim, with due regard for the purposes of discipline.

In the present matter, Respondent was found culpable of violating section 6103 for nonpayment of court-ordered sanctions in two client matters and section 6068, subdivision (i) for not cooperating with the State Bar in three disciplinary investigations, among other things. "Other than outright deceit, it is difficult to imagine conduct in the course of legal representation [violating a court order] more unbefitting an attorney." (*Barnum v. State Bar* (1990) 52 Cal.3d

104, 112.) Moreover, failure to cooperate with a State Bar investigation "reflects a disdain and contempt for the orderly process and rule of law on the part of an attorney who has sworn to uphold the law." (*Baca v. State Bar* (1990) 52 Cal.3d 294, 305.) Both of these concerns merit significant discipline. The court recommends a one-year actual suspension, among other things, as sufficient to protect the public and as consistent with the standards and supported by case law.

The court found instructive *In the Matter of Peterson* (1990) 1 Cal. State Bar Ct. Rptr. 73. In that case, a defaulting attorney received a three-year stayed suspension with one-year actual suspension for misconduct involving three clients. The attorney failed to perform and improperly withdrew in each matter, and failed to cooperate with the State Bar investigations. Although the attorney had no prior record of discipline, this was not considered a mitigating factor since the attorney practiced only six years before his misconduct commenced. In aggravation, the matter involved client harm, multiple acts of wrongdoing, indifference toward rectification, and a lack of candor and cooperation. Respondent herein merits comparable discipline. He participated and cooperated in the proceedings, presented greater mitigation and somewhat less aggravation than in *Peterson*.

Respondent has been through the disciplinary system before and, as an attorney, should have a heightened sense of the importance of conforming his conduct to the requirements of the law. His repeated failures to do so may call into question his integrity as an officer of the court and his fitness to represent clients. (*In re Kelley* (1990) 52 Cal.3d 487, 497.) Accordingly, after thorough consideration of the present misconduct, the standards and case law, as well as the mitigating and aggravating circumstances, the court recommends, among other things, that respondent be actually suspended for one year and until he pays the court-ordered sanctions in the *Sanchez* and *Shick* matters.

RECOMMENDED DISCIPLINE

Actual Suspension

For all of the above reasons, it is recommended that **Andrew Francis Linehan**, Member No. 194350, be suspended from the practice of law for three years; that execution of that suspension be stayed; and that Respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for a minimum of the first one year of probation and until the following requirements are satisfied:
   (a) Respondent must pay the $2,600 sanction award, issued by the Superior Court of the County of Riverside on July 28, 2011, in *Sanchez v. Sanchez*, case no. SWD005757;
   (b) Respondent must pay the $33,766.50 sanction award, issued by the Superior Court of the County of Riverside on November 19, 2010, in *Partee v. Colt Security, Inc., et al*, case no. INC087983; and
   (c) If Respondent remains suspended for two years or more as a result of not satisfying the preceding requirement(s), he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
3. Respondent must maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership

Records Office and the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will not be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

4. Within thirty (30) days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation and must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

5. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Respondent is on probation (reporting dates).[3] However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

(a) in the first report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

[3] To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

(b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

5. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.

6. Within one year after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)

7. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

8. At the termination of the probation period, if Respondent has complied with all of the terms of his probation, the three-year period of stayed suspension will be satisfied and the suspension will be terminated.

MPRE

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was previously ordered to do so in Supreme Court order no. S198815 (State Bar Court case no. 10-O-10931) and successfully passed that examination in September 2012.

California Rules of Court, Rule 9.20

The court recommends that Respondent be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[4]

Costs

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: August _____, 2013

DONALD F. MILES
Judge of the State Bar Court

[4] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)